

FIRST REGULAR SESSION

HOUSE BILL NO. 575

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HIGDON (Sponsor), ELLINGER,
PIERSON AND KELLY (45) (Co-sponsors).

1549L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 547.035, 547.037, 590.700, and 650.056, RSMo, and to enact in lieu thereof nine new sections relating to criminal procedure.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 547.035, 547.037, 590.700, and 650.056, RSMo, are repealed and
2 nine new sections enacted in lieu thereof, to be known as sections 491.500, 545.275, 545.365,
3 547.035, 547.037, 590.700, 650.056, 650.070, and 650.075, to read as follows:

- 491.500. 1. As used in this section, the following terms shall mean:**
- 2 **(1) "Administrator", the person conducting the photograph or live lineup;**
3 **(2) "Blind administrator", an administrator who does not know the identity of the**
4 **suspect;**
5 **(3) "Blinded administrator", an administrator who may know which lineup**
6 **member is the suspect but does not know which lineup member is being viewed by the**
7 **eyewitness;**
8 **(4) "Eyewitness", a person who observes another person at or near the scene of an**
9 **offense;**
10 **(5) "Filler", a person, or photograph of a person, who is not suspected of an offense**
11 **and is included in an identification procedure;**
12 **(6) "Live lineup", an identification procedure in which a group of persons,**
13 **including the suspected perpetrator of an offense and other persons not suspected of the**
14 **offense, is displayed to an eyewitness for the purpose of determining whether the**
15 **eyewitness identifies the suspect as the perpetrator;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (7) "Photo lineup", an identification procedure in which an array of photographs,
17 including a photograph of the suspected perpetrator of an offense and additional
18 photographs of other persons not suspected of the offense, is displayed to an eyewitness for
19 the purpose of determining whether the eyewitness identifies the suspect as the
20 perpetrator;

21 (8) "Show up", an identification procedure in which an eyewitness is presented
22 with a single suspect for the purpose of determining whether the eyewitness identifies such
23 individual as the perpetrator;

24 (9) "Suspect", the person believed by law enforcement to be the possible
25 perpetrator of the crime.

26 2. By January 1, 2014, any law enforcement agency conducting one or more of the
27 identification procedures listed in subsection 1 of this section shall adopt written rules
28 governing the procedures. Each agency shall provide a copy of its written rules to the
29 director of the department of public safety by February 1, 2014. Each agency shall
30 thereafter complete a review of its rules every two years to determine whether new
31 evidence in identification procedures has emerged that would support revising the rules.
32 The agency shall resubmit its rules after completing its biennial review no later than
33 February first of each even-numbered year.

34 3. In developing and revising rules under this section, a law enforcement agency
35 shall adopt practices shown by reliable evidence to enhance the accuracy of identification
36 procedures and minimize mistaken identifications.

37 4. The written rules shall include, but not be limited to, the following:

38 (1) A requirement that only a blind or blinded administrator shall perform a live
39 or photo lineup;

40 (2) A list of instructions that shall be given to the eyewitness to minimize the
41 likelihood of an inaccurate identification. The instructions shall include that the suspect
42 may not be in the lineup, that the administrator does not know if the suspect is in the
43 lineup, that the eyewitness does not need to identify anyone, and that if the eyewitness does
44 make an identification during the procedure, the eyewitness will be required to give a
45 recorded statement regarding his or her confidence level in the identification;

46 (3) A requirement for a minimum of five fillers to appear in each photo or live
47 lineup and a requirement that all fillers generally resemble the suspect, so the suspect does
48 not unduly stand out;

49 (4) A requirement that each individual or photo in a lineup procedure be presented
50 to the witness individually in a sequential order that is previously determined, with no two
51 individuals or photos appearing before the witness at the same time;

52 **(5) Prohibitions on reusing fillers in lineups viewed by the same eyewitness and**
53 **allowing an eyewitness to participate in multiple lineups that include the same suspect;**

54 **(6) A prohibition on allowing more than one suspect to be present, or have his or**
55 **her photograph present, at a lineup;**

56 **(7) A requirement, where practicable, to video or digitally record the entirety of a**
57 **photo or live lineup procedure. If videotaping or digital video recording is not practicable,**
58 **a photograph shall be taken of each lineup and a detailed record made as soon as possible**
59 **and without undue delay that describes, with specificity, how the entire procedure was**
60 **administered, the appearance of the fillers and the suspect, and that details the identities**
61 **of everyone present;**

62 **(8) A requirement that the eyewitness, at the time of the lineup and in the**
63 **eyewitness's own words, give a video or audio recorded statement to the administrator**
64 **regarding the eyewitness's confidence level that the person identified is the person who**
65 **committed the crime;**

66 **(9) Steps to minimize factors that influence an eyewitness to identify a suspect or**
67 **overstate his or her confidence level in identifying a suspect, including verbal or nonverbal**
68 **reactions of the administrator;**

69 **(10) A prohibition on the administrator providing any feedback about an**
70 **eyewitness' identification at any time;**

71 **(11) A list of the circumstances under which a show up is warranted that are**
72 **limited to circumstances in which the police could not conduct a photo or live lineup**
73 **because the police lacked probable cause to make an arrest or as a result of other exigent**
74 **circumstances; and**

75 **(12) Requirements for show up procedures to ensure that the procedure is not**
76 **conducted in a location or manner that implicitly conveys to the witness that the suspect**
77 **is guilty.**

78 **5. All written department eyewitness identification rules shall be made available**
79 **to the public upon request.**

80 **6. The requirements of subsection 4 of this section shall not prohibit a law**
81 **enforcement agency from adopting other scientifically accepted procedures for conducting**
82 **identification procedures that the scientific community considers more effective.**

83 **7. All of the following shall be available as consequences of compliance or**
84 **noncompliance with the requirements of this section:**

85 **(1) Failure to comply with any of the requirements of this section shall be**
86 **considered by the court in adjudicating motions to suppress eyewitness identification under**
87 **section 545.275;**

88 (2) Failure to comply with any of the requirements of this section shall be
89 admissible in support of claims of eyewitness misidentification, as long as such evidence is
90 otherwise admissible;

91 (3) When evidence of compliance or noncompliance with the requirements of this
92 section has been presented at trial, the jury shall be instructed that it may consider credible
93 evidence of compliance or noncompliance to determine the reliability of eyewitness
94 identifications.

 545.275. 1. In order to obtain a pretrial hearing on a motion to suppress evidence
2 obtained during a live or photo lineup or show up procedure, the defendant shall produce
3 evidence of suggestiveness within the procedure that could lead to a mistaken
4 identification. The burden then shifts to the state to prove that the identification is reliable.

5 2. To evaluate whether there is evidence of suggestiveness in order to hold a
6 hearing, the judge shall consider the following:

7 (1) Whether the law enforcement agency complied with written eyewitness
8 identification procedures adopted under section 491.500 and the extent to which such
9 procedures comply with the provisions of subsection 4 of section 491.500;

10 (2) Whether the eyewitness spoke to anyone besides the law enforcement agency
11 about the identification;

12 (3) Whether the eyewitness made no choice or chose a different suspect or filler
13 during an identification procedure; and

14 (4) Any other evidence of suggestiveness.

15 3. The court may dismiss the motion at any time it concludes that the defendant's
16 initial claim of suggestiveness is not supported by the evidence.

17 4. Additional factors the judge shall consider during the suppression hearing
18 include, but shall not be limited to, the following:

19 (1) The length of time the witness had to observe the event;

20 (2) The distance between the witness and the perpetrator;

21 (3) The lighting conditions at the time of the event;

22 (4) Whether the witness was under the influence of alcohol or drugs;

23 (5) The age of the witness;

24 (6) Whether the perpetrator was wearing a disguise;

25 (7) Whether the suspect had different facial features at the time of the
26 identification;

27 (8) The length of time that elapsed between the crime and the identification;

28 (9) Whether the identification was by a witness who is a different race than the
29 suspect;

30 (10) The degree of attention the eyewitness paid to the perpetrator during the
31 event; and

32 (11) The accuracy of any descriptions of the suspect provided by the eyewitness
33 before the identification procedure occurred.

34 5. The judge shall approve the motion to suppress the identification evidence if he
35 or she finds, from the totality of the circumstances, that a substantial likelihood of
36 irreparable misidentification exists.

37 6. Expert testimony shall be admissible on eyewitness identifications at the hearing
38 on a motion to suppress identification evidence and at the trial.

39 7. If eyewitness identification evidence is admitted at trial, the court shall instruct
40 the jury, in addition to any instructions admissible under subsection 7 of section 491.500,
41 on how to assess the reliability of the identification. The court shall also instruct the jury
42 on any factors that may raise the risk of misidentifications based on the particular facts of
43 the case, including, but not limited to, the factors listed in subsection 4 of this section.

545.365. 1. As used in this section, the following terms shall mean:

2 (1) "Consideration", any agreement that is expressed or implied for a plea bargain,
3 bail consideration, reduction or modification of sentence, or any other leniency, benefit,
4 immunity, financial assistance, reward, or amelioration of current or future conditions of
5 incarceration in return for, or in connection with, the informant's testimony in the criminal
6 proceeding in which the prosecuting or circuit attorney intends to call him or her as a
7 witness;

8 (2) "In-custody informant", a person, other than a co-defendant, percipient
9 witness, accomplice, or co-conspirator whose testimony is based upon statements made by
10 the defendant while both the defendant and the informant were being held within the same
11 correctional institution.

12 2. In any criminal trial or proceeding in which the prosecuting or circuit attorney
13 intends to call an in-custody informant to testify on any matter, the attorney shall disclose
14 to the defense attorney, in addition to any other information required to be disclosed by
15 law, the following:

16 (1) A written statement, signed by the informant, his or her attorney if the
17 informant is represented, and the prosecuting or circuit attorney, setting out any and all
18 consideration promised to, received by, or to be received by the informant from any
19 source;

20 (2) Any video or audio recording of the informant's interview or discussion with
21 law enforcement officers regarding the statement;

22 (3) The complete criminal history of the informant;

23 (4) The names and addresses of any and all persons with information concerning
24 the defendant's alleged statements, including but not limited to: law enforcement and
25 prison officers to whom the informant related the statements, other persons named or
26 included in the statement, and any other persons who witnessed the statement or who can
27 be reasonably expected to have witnessed the statement;

28 (5) Any prior cases in which the informant testified and any consideration
29 promised to, or received by, the informant, provided such information may be obtained by
30 reasonable inquiry;

31 (6) Any and all statements by the informant concerning the offense charged; and

32 (7) Any other information that tends to undermine the informant's credibility.

33 3. Any materials required to be disclosed under this section are admissible to
34 impeach the credibility of the in-custody informant if the informant testifies at a court
35 proceeding.

36 4. In order for the testimony of an in-custody informant to be admissible in a court
37 proceeding, the prosecuting or circuit attorney shall file a motion requesting the testimony
38 be admissible. The prosecuting or circuit attorney shall bear the burden of proof at the
39 hearing. The court may approve the motion if it concludes that, by a preponderance of the
40 evidence, the testimony is reliable and corroborated by other evidence.

41 5. Corroborating evidence shall be credible evidence or information available
42 independent of the in-custody informant, which significantly supports the informant's
43 testimony. Corroborating evidence shall not include the testimony of another in-custody
44 informant unless it is established by a preponderance of the evidence that the informant
45 has not communicated with another in-custody informant about the testimony.

46 6. In order to determine whether the evidence is reliable, the court shall consider
47 the following:

48 (1) Any requests for consideration by the in-custody informant, any consideration
49 offered, and whether any offer of consideration was in writing and signed by the
50 prosecuting or circuit attorney and the informant;

51 (2) Whether the informant's interview or discussion with law enforcement officers
52 regarding the statement was video or audio recorded;

53 (3) The complete criminal history of the informant;

54 (4) Any statement made by the defendant, including the specificity of the statement,
55 whether the statement led to the discovery of new evidence or contained details only known
56 by the perpetrator, and the extent to which the statement contained details which could
57 reasonably be accessed by the informant other than through statements by the defendant;

58 **(5) The time, place, and circumstances of the statement and the disclosure of the**
59 **statement to law enforcement officials, including how the statement was recorded by the**
60 **informant, how law enforcement officers learned that the informant had information, and**
61 **how officers questioned the informant about the disclosure, investigated the information,**
62 **and recorded the disclosure;**

63 **(6) Any relationship between the informant and the defendant;**

64 **(7) Any inconsistent statement by the informant;**

65 **(8) The reliability of testimony provided by the informant on previous occasions**
66 **in which the informant claimed to have been witness to statements made in custody or**
67 **testified in a court proceeding on behalf of or against another person, or on his or her own**
68 **behalf;**

69 **(9) The quality of corroborating evidence; and**

70 **(10) Any other evidence relating to the credibility of the informant and the**
71 **reliability of the testimony.**

72 **7. Whenever an in-custody informant has testified at trial, the court shall instruct**
73 **the jury to consider the factors listed in subsection 6 of this section when evaluating the**
74 **reliability of the testimony. The jury shall not be instructed that the court has already**
75 **found the in-custody informant to be reliable.**

76 **8. The attorney general shall create and maintain a registry of in-custody**
77 **informants. The registry shall contain the name of any in-custody informant who testifies**
78 **at any criminal proceeding, and any information regarding the informant or such person's**
79 **testimony that was presented in court or disclosed to defense attorneys under this section.**
80 **Information in the registry shall not be a public record under chapter 610 and shall only**
81 **be available to prosecuting or circuit attorneys, law enforcement officers, and defense**
82 **attorneys upon request.**

 547.035. 1. A person in the custody of the department of corrections claiming that
2 forensic [DNA] testing will demonstrate the person's innocence of the crime for which the person
3 is in custody may file a postconviction motion in the sentencing court seeking such testing. A
4 **person who has been sentenced to death who claims forensic testing will demonstrate the**
5 **person's innocence of any statutory aggravating factor under section 565.032 that the trier**
6 **set out in its findings or verdict when declaring its punishment may file a post conviction**
7 **motion in the sentencing court seeking such testing.** The procedure to be followed for such
8 motions is governed by the rules of civil procedure insofar as applicable.

9 2. The motion must allege facts under oath demonstrating that:

10 (1) There is evidence upon which [DNA] **forensic** testing can be conducted; and

11 (2) The evidence was secured [in relation to the crime] **during an investigation of any**
12 **crime, whether committed by the offender filing the motion or by any other person;** and

13 (3) **There is a reasonable likelihood that additional testing would produce more**
14 **probative results, or** the evidence was not previously tested by the movant because:

15 (a) The technology for the testing was not reasonably available to the movant at the time
16 of the trial;

17 (b) Neither the movant nor his or her trial counsel was aware of the existence of the
18 evidence at the time of trial; or

19 (c) The evidence was otherwise unavailable to both the movant and movant's trial
20 counsel at the time of trial; and

21 (4) Identity was an issue in the trial; and

22 (5) A reasonable probability exists that the movant would not have been convicted if
23 exculpatory results had been obtained through the requested [DNA] **forensic testing, or if the**
24 **movant has been sentenced to death, that such person would not have been sentenced to**
25 **death.**

26 3. Movant shall file the motion and two copies thereof with the clerk of the sentencing
27 court. The clerk shall file the motion in the original criminal case and shall immediately deliver
28 a copy of the motion to the prosecutor.

29 4. The court shall issue to the prosecutor an order to show cause why the motion should
30 not be granted unless:

31 (1) It appears from the motion that the movant is not entitled to relief; or

32 (2) The court finds that the files and records of the case conclusively show that the
33 movant is not entitled to relief.

34 5. Upon the issuance of the order to show cause, the clerk shall notify the court reporter
35 to prepare and file the transcript of the trial or the movant's guilty plea and sentencing hearing
36 if the transcript has not been prepared or filed.

37 6. If the court finds that the motion and the files and records of the case conclusively
38 show that the movant is not entitled to relief, a hearing shall not be held. If a hearing is ordered,
39 counsel shall be appointed to represent the movant if the movant is indigent. The hearing shall
40 be on the record. Movant need not be present at the hearing. The court may order that testimony
41 of the movant shall be received by deposition. The movant shall have the burden of proving the
42 allegations of the motion by a preponderance of the evidence.

43 7. The court shall order appropriate testing if the court finds:

44 (1) A reasonable probability exists that the movant would not have been convicted **or**
45 **sentenced to death** if exculpatory results had been obtained through the requested [DNA]
46 **forensic testing;** and

47 (2) That movant is entitled to relief. Such testing shall be conducted by a facility
48 mutually agreed upon by the movant and by the state and approved by the court. If the parties
49 are unable to agree, the court shall designate the testing facility. The court shall impose
50 reasonable conditions on the testing to protect the state's interests in the integrity of the evidence
51 and the testing process.

52 8. The court shall issue findings of fact and conclusions of law whether or not a hearing
53 is held.

 547.037. 1. If testing ordered pursuant to section 547.035 demonstrates a person's
2 innocence of the crime for which the person is in custody **or demonstrates a person's**
3 **innocence of the aggravating factor or factors the trier set out in its findings or verdict**
4 **when declaring its punishment of a death sentence**, a motion for release **or motion for a new**
5 **sentence** may be filed in the sentencing court.

6 2. The court shall issue to the prosecutor an order to show cause why the motion should
7 not be granted. The prosecutor shall file a response consenting to or opposing the motion.

8 3. If the prosecutor consents to the motion and if the court finds that such testing
9 demonstrates the movant's innocence of the crime for which he or she is in custody, the court
10 shall order the movant's release from the sentence for the crime for which testing occurred. **If**
11 **the prosecutor consents to the motion and the court finds that the testing demonstrates the**
12 **person's innocence as it relates to the aggravating factor or all the factors the trier set out**
13 **in its findings or verdict when declaring its punishment of a death sentence, the court shall**
14 **order the person to serve a sentence of imprisonment for life without eligibility for**
15 **probation, parole, or release except by act of the governor. If the testing demonstrates the**
16 **person's innocence of one or more aggravating factors but not all of the factors that the**
17 **trier set out in its findings or verdict, then the court shall set the sentence aside and order**
18 **a retrial of the punishment hearing. A new jury shall be selected or a jury may be waived**
19 **by agreement of both parties and the punishment trial shall proceed in accordance with**
20 **this chapter.**

21 4. If the prosecutor files a response opposing the movant's release **or resentencing**, the
22 court shall conduct a hearing. If a hearing is ordered, the public defender shall be appointed to
23 represent the movant if the movant is indigent. The hearing shall be on the record. The movant
24 shall have the burden of proving the allegations of the motion by a preponderance of the
25 evidence.

26 5. If the court finds that the testing ordered pursuant to section 547.035 demonstrates the
27 movant's innocence of the crime for which he or she is in custody, the court shall order the
28 movant's release from the sentence for the crime for which the testing occurred. **If the court**
29 **finds the testing demonstrates the person's innocence of the statutory aggravating factor**

30 or all the factors under section 565.032 that the trier set out in its findings or verdict when
31 declaring its punishment of a death sentence, the court shall order the person to serve a
32 sentence of imprisonment for life without eligibility for probation, parole, or release except
33 by act of the governor. If the testing demonstrates the person's innocence of one or more
34 aggravating factors but not all of the factors that the trier set out in its findings or verdict,
35 then the court shall set the sentence aside and order a retrial of the punishment hearing.
36 A new jury shall be selected or a jury may be waived by agreement of both parties and the
37 punishment trial shall proceed in accordance with this chapter. Otherwise, relief shall be
38 denied the movant.

39 6. The court shall issue findings of fact and conclusions of law whether or not a hearing
40 is held. An appeal may be taken from the court's findings and conclusions as in other civil cases.
590.700. 1. As used in this section, the following terms shall mean:

2 (1) "Custodial interrogation", the questioning of a person under arrest, who is no longer
3 at the scene of the crime, by a member of a law enforcement agency along with the answers and
4 other statements of the person questioned. "Custodial interrogation" shall not include:

5 (a) A situation in which a person voluntarily agrees to meet with a member of a law
6 enforcement agency;

7 (b) A detention by a law enforcement agency that has not risen to the level of an arrest;

8 (c) Questioning that is routinely asked during the processing of the arrest of the suspect;

9 (d) Questioning pursuant to an alcohol influence report;

10 (e) Questioning during the transportation of a suspect;

11 (2) "Recorded" and "recording", any form of audiotape, videotape, motion picture, or
12 digital recording.

13 2. All custodial interrogations of persons suspected of committing or attempting to
14 commit murder in the first degree, murder in the second degree, assault in the first degree, assault
15 of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse
16 in the first degree, robbery in the first degree, arson in the first degree, forcible rape, forcible
17 sodomy, kidnapping, statutory rape in the first degree, statutory sodomy in the first degree, child
18 abuse, or child kidnapping shall be recorded when feasible. **Custodial interrogations shall not**
19 **be required to be recorded:**

20 [3. Law enforcement agencies may record an interrogation in any circumstance with or
21 without the knowledge or consent of a suspect, but they shall not be required to record an
22 interrogation under subsection 2 of this section:]

23 (1) If the suspect requests that the interrogation not be recorded;

24 (2) If the interrogation occurs outside the state of Missouri;

25 (3) If exigent public safety circumstances prevent recording; **or**

26 (4) To the extent the suspect makes spontaneous statements[;] .

27 [(5)] **3.** If the recording equipment fails[;] or

28 [(6) If] **the recording equipment is not available at the location where the interrogation**
29 **takes place, the law enforcement agency shall demonstrate a good faith effort to maintain**
30 **recording equipment for interrogations in order to comply with this section.**

31 **4. Law enforcement agencies may record an interrogation in any circumstance with**
32 **or without the knowledge or consent of a suspect.**

33 **5.** Each law enforcement agency shall adopt a written policy to record custodial
34 interrogations of persons suspected of committing or attempting to commit the felony crimes
35 described in subsection 2 of this section.

36 [5. If a law enforcement agency fails to comply with the provisions of this section, the
37 governor may withhold any state funds appropriated to the noncompliant law enforcement
38 agency if the governor finds that the agency did not act in good faith in attempting to comply
39 with the provisions of this section.

40 6. Nothing in this section shall be construed as a ground to exclude evidence, and a
41 violation of this section shall not have impact other than that provided for in subsection 5 of this
42 section. Compliance or noncompliance with this section shall not be admitted as evidence,
43 argued, referenced, considered or questioned during a criminal trial.]

44 **6. An oral, written, or sign language statement of an accused made as a result of a**
45 **custodial interrogation shall be presumed to be inadmissible as evidence in any criminal**
46 **proceeding brought for any of the crimes listed in subsection 2 of this section if the**
47 **interrogation was not recorded as required under this section unless one of the exceptions**
48 **listed in subsection 2 or 3 of this section applies or the statement is used for the purposes**
49 **of impeachment. The state shall bear the burden of proving the applicability of an**
50 **exception.**

51 **7. The presumption of inadmissibility of a statement made by a suspect at a**
52 **custodial interrogation may be overcome by a preponderance of the evidence that the**
53 **statement was voluntarily given and is reliable, based on the totality of the circumstances.**

54 **8.** Nothing contained in this section shall be construed to authorize, create, or imply a
55 private cause of action.

56 **9. Every electronic recording required under this section shall be preserved until**
57 **judgment for any offense relating to the statement is final and all direct and habeas corpus**
58 **appeals are exhausted, or the prosecution of such offense is barred by law.**

650.056. **1.** Any **biological** evidence [leading to a conviction] **gathered during an**
2 **investigation** of a felony described in subsection 1 of section 650.055 [which has been or can
3 be tested for DNA] shall be preserved by the investigating law enforcement agency **until any**

4 offender who was convicted of a felony and sentenced to a term of imprisonment as a result
5 of such investigation has been released from prison.

6 2. Any biological evidence gathered during an investigation of first degree murder
7 shall be preserved by the investigating law enforcement agency until:

8 (1) Five years after any offender who was convicted of first degree murder as a
9 result of the investigation has been executed; or

10 (2) Such person as been released from prison as a result of a pardon or finding of
11 innocence.

12 3. The evidence shall be retained in a manner that preserves any possible DNA
13 evidence for future testing. If retention of a particular piece of property containing DNA
14 evidence is impractical, the agency shall take reasonable care to retain representative
15 samples of portions of the property that contain DNA evidence.

16 4. If the crime remains unsolved, any biological evidence collected during the
17 investigation shall be properly preserved until the prosecuting or circuit attorney provides
18 written authorization to the agency to destroy or discard the evidence.

650.070. Each law enforcement agency that collects biological evidence for use in
2 criminal investigations shall develop written guidelines, that are open to public inspection,
3 for the identification, collection, and preservation of biological evidence. Such guidelines
4 shall include, but not be limited to, the following provisions:

5 (1) Whenever it is believed that biological evidence relevant to an investigation of
6 a dangerous felony, as the term "dangerous felony" is defined in section 556.061, or first
7 degree murder is present at a location, a law enforcement officer or other forensic
8 investigator shall be promptly dispatched to the location to collect the evidence;

9 (2) Only law enforcement officers or other forensic investigators properly trained
10 in the identification, collection, and preservation of biological evidence shall identify,
11 collect, and preserve biological evidence in felony criminal investigations;

12 (3) Law enforcement officers and other forensic investigators shall exercise
13 reasonable care to ensure that the collection of biological evidence from a crime scene is
14 representative of all relevant evidence present;

15 (4) Biological evidence shall be collected and preserved in a manner designed to
16 document its identity, and to ensure its integrity and its availability for testing and
17 retesting;

18 (5) The evidence shall be properly handled, packaged, labeled, and the following
19 information shall be documented:

20 (a) The location where it was collected;

21 (b) The person, place, or thing from which the evidence was collected;

- 22 (c) The date and time it was collected;
23 (d) The person who collected it; and
24 (e) The manner in which it was collected and preserved.

**650.075. 1. When possible, a portion of any piece of biological evidence tested and
2 any extract from a DNA sample shall be preserved for further testing.**

3 **2. If a law enforcement officer is requesting the testing, a crime laboratory shall not
4 undertake testing that entirely consumes a DNA sample or the extract from it without the
5 prior approval of the prosecutor. Before approving such a test, the prosecutor shall
6 provide the defendant against whom an accusatorial instrument has been filed in relation
7 to the criminal investigation in which the sample is being tested, or the suspect who has
8 requested prior notice, an opportunity to object and move for an appropriate court order.**

9 **3. If an attorney for the defendant is requesting a test that entirely consumes a DNA
10 sample or the extract from it, the attorney shall provide the prosecutor with an opportunity
11 to object and move for an appropriate court order.**

✓